

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
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UNITED STATES OF AMERICA,

-V-

CRISTIAN MARINO CASTRO,

Defendant.

20-cr-157 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

Defendant Cristian Marino Castro moves, pursuant to 18 U.S.C. § 3582(c)(2), to correct his sentence. Dkt. No. 118. Section 3582(c)(2) is available for defendants who have been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). But Defendant does not identify a range that has been lowered by the Sentencing Commission. Instead, he argues that the Court misapplied the Sentencing Guidelines. *See* Dkt. No. 118 at 12–16. That claim is not cognizable under Section 3582(c)(2).

Defendant's motion could be construed as a challenge to the constitutionality or lawfulness of his sentence under 28 U.S.C. § 2255. As a general matter, such motions must be filed within one year of the date on which the judgment of conviction becomes final. *Id.* § 2255(f). In addition, the law permits a defendant only one Section 2255 motion as a matter of right. There are limits on second or successive motions. *Id.* § 2255(h). The docket reflects that Defendant's conviction has not become final, as he has filed a notice of appeal and it appears that the appeal is still pending. Dkt. No. 97. Accordingly, the Court will not presume that Defendant

intends the Court to treat the motion as one under Section 2255.

It is hereby ORDERED that, by no later than September 27, 2024, Defendant shall inform the Court whether he wants his motion to be treated as a motion under Section 2255. If Defendant chooses such treatment, the Court will address Defendant's motion as one under Section 2255. This will limit Defendant's ability to file future motions under Section 2255. If Defendant does not choose this, the Court will treat the motion as it is captioned under Section 3582(c)(2), and the motion will be denied.

SO ORDERED.

Dated: September 4, 2024
New York, New York

A handwritten signature in black ink, appearing to read 'L. Liman', is written over a horizontal line.

LEWIS J. LIMAN
United States District Judge